United Nations CED/C/MEX/CO/1/Add.1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
3 May 2016
English
Original: Spanish
English, French and Spanish only

Committee on Enforced Disappearances

Concluding observations on the report presented by Mexico under article 29, paragraph 1, of the Convention

Addendum

Information received from Mexico on follow-up to the concluding observations*

[Date received: 25 February 2016]

I. Introduction

1. Mexico hereby submits its report on the follow-up to recommendations Nos. 18, 24 and 41 of the Committee on Enforced Disappearances, and reaffirms its firm commitment to continuing to work to prevent, investigate and punish instances of enforced disappearance with a view to completely eradicating this offence.

2. Mexico is aware of the significant challenges currently facing it and of the need to comprehensively tackle the problem of disappearances, taking into account the rights of victims' families, and to strengthen the capacity of bodies at all levels of government to respond immediately. Consequently, the legislation on the prevention and punishment of the offences of enforced disappearance and torture is currently being reviewed with the aim of harmonizing the definition of these offences within Mexico in line with international standards.

3. On 10 December 2015, President Enrique Peña Nieto sent to Congress a draft general law on the prevention, investigation and punishment of the offences of torture and other cruel, inhuman or degrading treatment or punishment and a draft general law on the prevention and punishment of offences related to the disappearance of persons, which will bring the definitions of the corresponding offences in the 32 federative entities into line with international standards.

4. These drafts meet the highest international standards, such as the non-applicability of a statute of limitations, legal excuses or justifications, and were the result of a wide-

* The present document is being issued without formal editing.

ranging process of prior consultation and discussion with civil society organizations, victims' families and experts in the field, carried out with the support of the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Human Rights. The Office of the Under-Secretary for Human Rights, at the Ministry of the Interior, launched a three-stage public consultation process on the draft general law on the prevention and punishment of offences related to the disappearance of persons (see annex for information on this process).

5. This draft law will make it possible to draw up a new public policy on the search for and location of disappeared persons and proposes the creation of four basic instruments:

(i) A *National Search System*, to ensure the immediate mobilization of public security agencies, the justice system and specialized staff following reports of disappearances. The aim is to guarantee a broad, flexible and timely institutional response in the immediate aftermath of a disappearance;

(ii) A *National Register of Missing and Disappeared Persons*, which will hold updated information from hospitals, detention centres and federal and local forensic services that will enable families to follow up on their complaints of disappearances;

(iii) A *National Forensic Register*, which will facilitate efforts to locate and identify disappeared persons;

(iv) A *National Citizens' Council* made up of human rights defenders, experts and relatives of victims, which will provide advice and issue opinions to the National Search System.

II. Information on paragraph 18 of the concluding observations

Paragraph 18. The State party should take the steps necessary to establish a single nationwide register of disappeared persons which generates accurate statistics that can be used to devise comprehensive and coordinated public policies for the prevention, investigation, punishment and elimination of this abhorrent crime. The register should, as a minimum: (a) provide exhaustive and detailed information about all cases of disappeared persons, including information about the sex, age and nationality of the disappeared persons and the place and date of their disappearance; (b) include information that can be used to determine whether the case in question is one of enforced disappearance or a disappearance that occurred without any involvement of State agents; (c) facilitate the generation of statistical data on cases of enforced disappearances, including cases that have been clarified; and (d) contain information based on clear, consistent criteria and be updated on a regular basis. In this context, the State party should use the fact that the regulations implementing the Act on the National Register of Missing and Disappeared Persons are still pending adoption as an opportunity to ensure that the aforementioned criteria are met. It should also adopt the necessary measures to guarantee that the authorities responsible for entering the relevant data do so in a consistent and exhaustive manner, immediately after being informed of a disappearance.

6. The National Register of Missing and Disappeared Persons was set up as the result of an agreement adopted at the National Conference of State Attorneys General in 2011, and was strengthened and consolidated by the Act on the National Register of Missing and Disappeared Persons, issued on 17 April 2012. As at December 2015, according to the statistical system set up pursuant to the Act, 27,659 persons were reported as disappeared or missing (26,670 by the ordinary courts and 989 by federal courts). These figures were

compiled by the Office of the Attorney General of the Republic on the basis of information provided by the offices of the attorneys general and prosecutors of the federative entities.

7. The information held by the National Register of Missing and Disappeared Persons is public, and anyone can monitor the addition and deletion of database entries. The Register can be consulted on the website of the Executive Secretariat of the National Public Security System (www.secretariadoejecutivo.gob.mx), which manages the sole database of information on all missing persons for both the period before and the period after 2012.

8. It is important to point out that the vast majority of cases listed in the Register are not investigations into enforced disappearances.[1]

9. During the early years of its use, there was no adequate system for cleaning and updating the database. To remedy this, a decision was taken at the twenty-ninth plenary assembly of the National Conference of State Attorneys General on 30 May 2013 to set up working groups in the offices of attorneys general and State prosecutors in each federative entity. These working groups were to revise, update and clean their registers according to standardized criteria.

10. The revision and cleaning process is ongoing, and there is now a reliable database containing data on disappeared persons disaggregated by sex, age, nationality, ethnicity, distinguishing features and disability, as well as by federative entity and the date and location of registration of the disappearance.

11. In an effort to provide better tools for the analysis, measuring and social control of disappearances in Mexico, the Office of the Attorney General reformulated the Register's methodology once the database had been cleaned. The new methodology was developed in consultation with a range of civil society organizations[2] to ensure that clear language was used. The same organizations were involved in the development of infographics showing the basic functions of the Register, with the aim of making the process even simpler to understand. For the first time, information was published on investigations into disappearances and enforced disappearances. These statistics, which are in open data format, refer only to investigations by the Office of the Attorney General, as enforced disappearance is not defined as a criminal offence in every federative entity. Consequently, the non-federal data available in the Register are not currently disaggregated in this way.

12. Mexico has nevertheless made progress in this area. On 19 and 20 August 2015, at the thirty-third plenary assembly of the National Conference of State Attorneys General, a motion was passed to commence harmonization of statistical information on enforced disappearances. It was agreed that the Office of the Attorney General would be the focal

[1] Regarding the number of alleged enforced disappearances, as at November 2015 the Office of the Special Prosecutor for Disappeared Persons had 968 cases open. Since 2006, the Office of the Attorney General of the Republic has opened 236 preliminary investigations into enforced disappearances. Of these, 55 originated in the Disappeared Persons Unit.

The General Coordination Office for Investigations (previously the office of the special prosecutor for social and political movements of the past) of the Office of the Assistant Attorney General for the Investigation of Federal Crimes within the Office of the Attorney General of the Republic has 268 cases from the period known as the "Dirty War". Of these, 242 cases relating to 492 people are being investigated as enforced disappearances. The remainder are investigations into murders, abuse of authority or illegal deprivation of liberty. Cases of enforced disappearance from the Dirty War are not statute-barred, in accordance with the Supreme Court decision that the limitations period begins to run only when the disappeared person is found, dead or alive.

[2] The organizations consulted were the Article 19 Mexico and Central America Office, the Mexican Institute of Competitiveness, Transparencia Mexicana and the Central-American Demographic Research Centre (CIDAC).

point for this information: this is a fundamental step towards replicating the federal model in non-federal jurisdictions.

13. A further measure intended to improve the Register was the publication of the names of disappeared persons. This measure was approved after an in-depth analysis of legislation and consultations with the National Institute for Transparency, Access to Public Information and Personal Data Protection. Once the aforementioned information harmonization process has been completed, progress can be made towards the non-federal model.

14. A further significant step, which aims to make it easier for families to report a disappearance, was the development of a tool on the Register website allowing people to report a disappearance online if they cannot find a record of it. This report triggers an investigation into a disappearance. The tool removes the need to go to an office of the Public Prosecution Service in the first instance.

15. As previously described, in addition to the work being done within the current regulatory framework, Mexico is making efforts to strengthen the legal framework. The federal executive has sent to Congress a proposal for a general act on the prevention and punishment of offences related to the disappearance of persons, which seeks to harmonize the offence across all the federative entities in accordance with article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance. The bill is still under consideration by Congress. A further legislative development concerns the adoption in May 2015 of the Act on the prevention, elimination and punishment of enforced disappearance of persons and disappearance by individuals in the Federal District, which is in force in Mexico City, the largest city in the country.

III. Information on paragraph 24 of the concluding observations

Paragraph 24. In conjunction with countries of origin and countries of destination, and with input from victims and civil society, the State party should redouble its efforts to prevent and investigate disappearances of migrants, to prosecute those responsible and to provide adequate protection for complainants, experts, witnesses and defence counsels. The transnational search and access to justice mechanism should guarantee: (a) that searches are conducted for disappeared migrants and that, if human remains are found, they are identified and returned; (b) that ante-mortem information is compiled and entered into the ante-mortem/post-mortem database; and (c) that the relatives of the disappeared persons, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search for the disappeared persons.

16. On 18 December 2015, the Official Gazette published Decision No. 11/117/15 establishing the Criminal Investigation Unit for Migrants and the Mechanism for Mexican Support Abroad in Search and Investigation Activities. The Unit's mandate is to facilitate access to justice for migrants and their families, to search for disappeared migrants, to investigate and prosecute crimes committed by or against migrants — strictly in accordance with all applicable laws and regulations — and to direct, coordinate and supervise the best and most effective courses of action to repair the damage done to the victims.

17. The Unit's mandate also includes the investigation of crimes committed against refugees or persons seeking refugee status under the international treaties ratified by Mexico (notably the Convention relating to the Status of Refugees), asylum seekers, stateless persons, persons enjoying additional protection, and Mexicans deported from other countries who are living in border areas or areas outside their place of origin or residence and who are living on the streets or who are at risk. The unit is attached to the Office of the

Assistant Attorney General for Human Rights, Crime Prevention and Community Services and took up its duties on 19 December 2015, the day after the publication of the aforementioned decision. The Inter-American Commission on Human Rights of the Organization of American States has recognized the importance of establishing this Unit.[3]

18. The Mechanism established by the same decision brings together all the special and coordinated actions and measures to be taken by Mexico to guarantee access to justice for migrant victims of crime and human rights violations. It also allows victims' relatives outside the country who do not have direct access to Mexican judicial institutions to lodge a complaint, request a search for their family member, present or request evidence, request recognition as an interested party and act in that capacity, and in general exercise their rights to clarification of the facts, access to justice and compensation for damages caused by the offence. Attachés from the Office of the Attorney General provide the point of entry to the Mechanism, which enables migrant victims and their relatives, regardless of which country they are in, to access the Mexican institutions responsible for investigating offences committed on Mexican territory against migrants and to lodge complaints, present evidence, exercise their rights and prerogatives as recognized by law, and contact the public defender's office in cases where a migrant is accused of a crime. Operational guidelines must be published within 120 days of publication of the decision establishing the Mechanism, namely April 2016 at the latest.

19. Both the Unit and the Mechanism will help to strengthen and replicate the work of the Forensic Commission established as a result of the Cooperation Agreement on the Identification by a Forensic Commission of Remains Found in San Fernando, Tamaulipas, and Cadereyta, Nuevo León. The Agreement was signed by the Office of the Attorney General of the Republic, the Argentine Forensic Anthropology Team and Mexican and Central American organizations for the relatives of disappeared persons.[4] The Agreement was published in the Official Gazette on 4 September 2013, and the addendum providing for the participation of the attorney general's offices of the states of Tamaulipas and Nuevo León to help achieve the goals of the Agreement was published in the Official Gazette on 23 October 2014.

20. Under the Agreement, institutional capacity in terms of expert witnesses and forensics has been strengthened, and international best practice has been considered with a view to its application in the daily work of the Office of the Attorney General. Progress has been made in designing and implementing a protocol that enables relatives of disappeared migrants to learn the truth. In particular, improvements have been made in the system for reporting and returning remains in cases involving foreign nationals, and procedures have been strengthened to guarantee human rights and full redress for the victims, thus ensuring respectful and dignified treatment.

21. With regard to collecting ante-mortem information and entering it in the ante-mortem/post-mortem database, work is currently under way to set up and implement the database nationally. Once this phase is complete, the next step will be to link the database with those of the Central American countries involved.

22. The participation of relatives of disappeared persons living abroad is guaranteed through the Mechanism for Mexican Support Abroad, regardless of where they live.

[3] http://www.oas.org/en/iachr/media_center/PReleases/2016/008.asp.

[4] Comité de Familiares de Migrantes Fallecidos y Desaparecidos de El Salvador; Comité de Familiares de Migrantes de El Progreso; Fundación para la Justicia y el Estado Democrático de Derecho; Casa del Migrante de Saltillo, Coahuila; Centro Diocesano de Derechos Humanos Fray Juan de Larios; Asociación Civil Voces Mesoamericanas; Mesa Nacional para las Migraciones en Guatemala; Asociación Misioneros de San Carlos Scalabrinianos en Guatemala; Centro de Derechos Humanos Victoria Diez; Foro Nacional para La Migración en Honduras.

Persons residing in Mexico who are relatives of disappeared persons are guaranteed access to and participation in investigations as direct or indirect victims, in accordance with applicable legislation and the Harmonized Protocol on the Search for Disappeared Persons and the Investigation of Enforced Disappearances.

23. The National Institute of Migration has migrant protection Beta Groups in nine states — Baja California, Sonora, Chihuahua, Coahuila, Tamaulipas, Chiapas, Tabasco, Veracruz and Oaxaca. The groups consist of 157 members from the three levels of government (117 from the federal level; 11 from the state level; and 29 from the municipal level).

24. In 2014-2015, the Beta Groups assisted 403,727 Mexican and foreign migrants. Of these, 323,713 received social welfare assistance, 6,148 were rescued, and 983 received first aid. Legal assistance was also provided to 594 migrants, and 85 migrants who had been reported missing were found.

25. During the same period, the Beta Groups coordinated searches for 2,732 people following 307 tracing requests, in locations including public and private hospitals, autopsy rooms, detention centres, border patrol posts, inspection points, checkpoints and Mexican consulates.

26. The National System for the Comprehensive Development of the Family, in collaboration with the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees and the United Nations Children's Fund, has developed a protocol for supporting unaccompanied or separated migrant children and adolescents living in shelters. A number of procedures have been established to ensure that shelters and units run by state and municipal family development systems safeguard the rights of migrant children and adolescents, regardless of whether they are accompanied, unaccompanied, separated, Mexican, foreign or repatriated in a human mobility context, including those who have been the victim of any type of abuse or violence.

27. The regional cooperation initiative between attorneys general and prosecution services in El Salvador, the United States of America, Guatemala and Honduras, proposed by the Office of the Attorney General of the Republic, tackles the problem of crimes committed against migrants from the perspective of shared responsibility and a humanitarian vision. A workplan has been developed with the aim of designing a strategy for the protection of the security and integrity of unaccompanied children and adolescents and the effective prosecution of criminal organizations that profit from a range of offences associated with the trafficking and smuggling of persons. This work has been characterized by very close cooperation and has involved the creation of thematic groups on international legal assistance, the harmonization of legislation and the investigation of trafficking and smuggling of minors, as well as fighting organized crime involving the smuggling of undocumented migrants, as provided for in the Mexican legal system.

28. Lastly, on 7 July 2014, the President of Mexico announced that a coordination office was to begin providing comprehensive assistance to migrants on the southern border. The office backs up the authorities in that area and coordinates the action taken by Central American countries, with the aim of overcoming common challenges related to migration flows and human rights, security and economic and social development, in order to establish a more modern, efficient, prosperous and safe border area and to put a stop to offences committed against migrants.

IV. Information on paragraph 41 of the concluding observations

Paragraph 41: In the light of article 24, paragraph 3, of the Convention, the State party should redouble its efforts to search for, locate and release disappeared persons and, in the event of death, locate, respect and return their remains. In particular, it should:

(a) Guarantee in practice that when news of a person's disappearance is received the search is initiated ex officio without delay in order to increase the chances of finding the person alive;

(b) Ensure that the search is conducted by the competent authorities with the involvement of the relatives of the person concerned;

(c) Strengthen the ante-mortem/post-mortem database, ensure that it is fully operational in all states as quickly as possible and guarantee that it contains the relevant information on all cases of disappeared persons, without exception, in strict conformity with the relevant protocols;

(d) Strengthen the genetic database of the Office of the Attorney General of the Republic to ensure that it contains information on all the persons that have disappeared in the State party;

(e) Guarantee effective coordination, cooperation and cross-referencing between the agencies responsible for searching for disappeared persons and for identifying their remains in the event of death, and ensure that they have the necessary economic, technical and human resources.

29. On 9 October 2015, the Office of the Attorney General transformed the Disappeared Persons Unit into the Office of the Special Prosecutor for Disappeared Persons, thereby giving the Special Prosecutor greater powers to lead, coordinate and oversee efforts to search for and locate disappeared persons and, where applicable, to forensically identify them and prosecute individuals charged with disappearance-related offences. The Office of the Special Prosecutor collaborates with the offices of various special prosecutors and investigation units, in particular those affiliated with the Office of the Assistant Attorney General for the Investigation of Organized Crime.

30. Any prosecution service that receives news of a disappearance is obliged to launch, ex officio and without delay, a search for the missing person, in accordance with the Harmonized Protocol on the Search for Disappeared Persons and the Investigation of Enforced Disappearances, which describes the steps to be taken in order to initiate a search and those to be taken within 24 hours of any disappearance, those to be taken within 24-72 hours, and those to be taken after 72 hours.

31. On 19 August 2015, the National Conference of State Attorneys General approved the Protocol, making its application compulsory across the country. The Protocol is the result of the collective efforts of the Office of the Attorney General of the Republic, the offices of the state and Federal District attorneys general, experts in the field and national and international human rights organizations. It covers best practices, international standards for investigations by government prosecutors, experts and the police, and the principles for treating victims with dignity and respect.

32. The Protocol provides for the right of the relatives of victims, as indirect victims, to take part in the search and investigation. Since November 2014, the Office of the Special Prosecutor for Disappeared Persons, in the Office of the Assistant Attorney General for Human Rights, has been searching for secret mass graves with the help of the relatives of victims in the town of Iguala, state of Guerrero, and surrounding areas. Using the

information provided by the families, searches have been carried out at 231 possible mass grave sites, 65 of which yielded results; as at 13 January 2016, 143 bodies have been exhumed.

33. The Office of the Attorney General launched the ante-mortem/post-mortem database on 26 October 2015 as part of the National Plan on the Search for Disappeared Persons. Databases containing information on the search for disappeared persons and on unidentified remains are being merged using software donated by the International Committee of the Red Cross under a cooperation agreement signed with the Office of the Attorney General in September 2014.

34. This electronic investigation tool makes it possible to manage and systematize data on disappeared persons and human remains, the circumstances of their disappearance and, where known, their whereabouts.

35. The Office of the Attorney General is training staff to use the ante-mortem/post-mortem database and is constantly updating it to meet the technical requirements of the digital platform with a view to ensuring that the software is operational in all of the Office's state-level branches. The information/training phase of the database's roll-out was conducted at the branches between 30 November and 4 December 2014 and will be repeated in February 2016, with a view to completing the roll-out in the first half of the year.

36. In addition, efforts have been made to adapt and standardize formatting in order to integrate all the national databases containing forensic data into the federal tool. Among the tasks associated with operating the ante-mortem/post-mortem database, 95 mobile laboratories of the Office of the Attorney General, including 30 genetic laboratories, have been deployed to support investigations by state-level prosecution services. The software has been installed on 275 computers at the headquarters of the Office of the Attorney General in the Federal District and in all 32 state-level branches.

Combined DNA Index System

37. At the end of 2012, it was agreed at the National Conference of State Attorneys General to combine the genetic databases of all the states into a Combined DNA Index System (CODIS), to consolidate the data and genetic profiles on the relatives of disappeared persons, unidentified remains and detained persons, among others, thereby making it easier to search for and locate individuals.

38. Currently, the General Coordination Office for Expert Witness Services at the Office of the Attorney General maintains CODIS, which includes the genetic profile generated from DNA analysis of remains and relatives of disappeared persons. It should be noted that CODIS contains the information obtained in cases brought to the attention of the Office of the Attorney General and data contributed by other attorneys general and public prosecution services in the country. As at 20 November 2015, the database contained 10,110 files on relatives of disappeared persons.

Harmonized Protocol on the Investigation of Enforced Disappearances

39. The Office of the Attorney General achieved the unanimous adoption of the Harmonized Protocol on the Investigation of Enforced Disappearances on 19 August 2015 at the thirty-third ordinary meeting of the National Conference of State Attorneys General.

40. The Protocol is the result of the collective efforts of the Office of the Attorney General, the offices of the attorneys general at the state and Federal District levels, experts in the field and national and international human rights organizations.

41. In terms of forensics, the Protocol is based on the Protocol on Forensic Identification and Processing developed by the Office of the Attorney General and the International Committee of the Red Cross and published in the Official Gazette of 3 March 2015. It also draws on the Protocol on Reporting the Identification of Remains, prepared in the context of the Cooperation Agreement on the Identification by a Forensic Commission of Remains Found in San Fernando, Tamaulipas, and Cadereyta, Nuevo León, which provides for the establishment of a forensic commission and which was published in the Official Gazette of 4 September 2013.

42. The Protocol's specific objectives are to: set up a mechanism for effective and prompt coordination among federal, state, Federal District and municipal authorities; protect direct and indirect victims of disappearance and safeguard their rights; track down, arrest, investigate and prosecute perpetrators of enforced disappearance, whether they are public officials or private individuals; set national standards for forensic identification and processing; develop the national register for prosecutors and experts on the search for disappeared persons; and ensure that victims enjoy the right of access to justice, truth and comprehensive reparation and the right to be involved alongside prosecutors, the police and experts.

43. When there is enough evidence to suggest that a victim of enforced disappearance is being held in State facilities, the authorities concerned must allow prosecution service officials to conduct an immediate inspection of the entire facility, including restricted areas.